

to report to his probation officer and his responsibility to pay costs, fines, and probation supervision fees. She said that George violated all of those conditions. The last contact she had with George was on August 28, 2003, and George had made no payments of costs, fines, or fees since his probation began.

George acknowledged that when he was placed on probation in August 1999, his conditions of probation required him to report to his probation officer and pay his fines. George admitted that he last contacted his probation officer on August 28, 2003, and that he had made no payments toward his court-ordered financial obligations.

According to George, he was unable to report and pay his fines for two reasons. The first was because in May 2003 he was sentenced to two years' imprisonment in Texas after violating a sentence of probation based on a 1994 charge of the unauthorized use of a motor vehicle. He claimed that his attorney who represented him for the 2003 Texas revocation told George that the two-year Texas term of imprisonment would run concurrent with his Arkansas probation. Therefore, according to George, when he was given an early release from the Texas prison in November 2003, he thought that his Arkansas probation obligations were satisfied.

George's second reason for failing to comply with his probation conditions was because in September 2005 he was arrested and jailed in Texas for twenty-one days and then placed on ten years' probation for failing to pay child support. George testified that since March 2007, he had been reporting to his Arkansas probation officer as required; however, he conceded that he had not been fulfilling his financial obligations because he injured his shoulder and could not work.

The trial court granted the State’s petition to revoke, stating:

[T]he facts are very clear that the Defendant has done absolutely nothing toward resolving the probation that he was granted back in 1999 . . . with little or no payments. In fact, I’m not sure that there has been any payments toward the financial obligations. . . . It’s been almost five years since he last reported, although he reported the last few months after he was released from custody. . . . So the court does find that Mr. George has violated the terms and conditions of his probation. He is hereby sentenced to 20 years in the Arkansas Department of Corrections (sic).

George appeals the revocation, arguing first that the trial court lacked jurisdiction. He asserts that his probationary period ended on August 30, 2004, and concedes that the arrest warrant relating to the petition to revoke was timely issued on January 7, 2004, pursuant to Ark. Code Ann. § 5-4-309(e)(2) (Repl. 2006).¹ However, he claims that because he was not arrested until March 7, 2007—three years after the warrant was issued and two years and seven months after his probation term expired—the warrant was unreasonably delayed and invalid. He relies upon Ark. Code Ann. § 5-1-109(f) (Repl. 2006), which provides that “a prosecution is commenced when an arrest warrant or other process is sought to be executed without unreasonable delay.”

The facts in this case are very similar to those in *Richmond v. State*, 326 Ark. 728, 934 S.W.2d 214 (1996). Richmond, in February 1989, was sentenced to five years’ probation after pleading guilty to several crimes. The State filed a petition to revoke Richmond’s probation, and in 1990 a bench warrant was issued for Richmond’s arrest. The warrant was not served until July 1995, approximately seventeen months after Richmond’s probation period expired.

¹Ark. Code Ann. § 5-4-309(e)(2) provides: “A court may revoke a suspension or probation subsequent to the expiration of the period of suspension or probation if before expiration of the period: . . . [a] warrant is issued for the defendant’s arrest for violation of suspension or probation”

After Richmond's probation was revoked, he appealed, arguing that the trial court lacked jurisdiction to revoke his probation after the expiration of his probation period because the warrant was stale. Richmond relied upon Ark. Code Ann. §§ 5-4-309(e)(2) and 5-1-109(f) for support.

There, our supreme court held that pursuant to Ark. Code Ann. § 5-4-309(e)(2), because the warrant was issued within the five-year probation period, under the plain language of the statute, the warrant was not stale and Richmond was properly served. *Richmond, supra*. The supreme court then stated that in order to prove that the delay was unreasonable, under Ark. Code Ann. § 5-1-109(f), Richmond had to present facts and evidence of an unreasonable delay at trial and then abstract that evidence. Because Richmond failed to abstract such evidence, the supreme court held that they could not make a determination on that issue. *Richmond, supra*.

Here, George did not present any evidence or argument below that demonstrated that there was an unreasonable delay in serving the warrant on him. If the supreme court in *Richmond* could not reach this issue because Richmond failed to abstract evidence of unreasonableness of the delay, our court cannot reach the issue because George failed to present below any evidence or argument of the unreasonableness of the delay. Accordingly, we cannot reach the merits of George's jurisdictional argument.

George's second argument on appeal is that there is insufficient evidence to support the revocation. While George admits he failed to comply with the conditions of his probation, he argues that he excusably failed to comply. He claims he did not report to his Arkansas probation officer because his attorney told him that he had fulfilled his Arkansas probation

conditions by serving time in a Texas prison in 2003. As for his failure to satisfy his financial obligations, he argues that his failure to pay was not willful; rather, he could not pay because he owed child support and he was injured and unable to work.

In a hearing to revoke a probation or suspended imposition of sentence, the State must prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Haley, supra*. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Id.* When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial court's superior position. *Id.*

We hold that the evidence is sufficient to support the trial court's revocation of probation. The facts are undisputed that George failed to report to his probation officer and pay his court-ordered financial obligations. While George testified that he did not think he had to report in Arkansas after he was released from prison in Texas, there were no documents or witnesses to corroborate George's testimony, and the trial court was not required to believe him. *See Scott v. State*, 27 Ark. App. 1, 764 S.W.2d 625 (1989) (stating that the trial court was not required to believe the appellant's testimony especially in light of the

fact that he was the one most interested in the outcome). Further, George made no effort to contact his Arkansas probation officer to confirm his probation obligations after he was released from the Texas prison.

As for George's failure to satisfy his financial obligations, because he concedes he did not make any payments, we must determine whether his failure to pay was willful. *See Robinson v. State*, 29 Ark. App. 17, 775 S.W.2d 916 (1989) (holding that when considering revocation for failure to pay restitution, the court must consider whether the failure was willful or due to inability to pay). George claims he could not make the payments because he has child-support obligations; however, he has not paid child support either as evidenced by his 2005 Texas imprisonment and probation. Moreover, George testified that from November 2003 until March 2007 he worked in Texas, but yet he made no probation payments during that period. While he claims that he was recently injured and cannot work, he offered no explanation as to why he has not made any payments since 1999.

In sum, the evidence in this case sufficiently supports the trial court's finding that "the facts are very clear that [George] has done absolutely nothing toward resolving the probation that he was granted back in 1999."

Affirmed.

MARSHALL and BAKER, JJ., agree.